IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
1. S.B. Criminal Appeal No.960/2004

Kalu Meena @ Kalu Ram S/o Shri Badri Prasad
AND Prakash Meena S/o Shri Sharwan Lal
Versus
The State of Rajasthan through P.P.

2. S.B. Criminal Appeal No.874/2004

Sriman Meena @ Sriman Lal Meena
Versus
State of Rajasthan through P.P.

Date of Judgment :::: 30th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Presence in Criminal Appeal No.960/2004

Shri Harendra Singh Sinsinwar, with
Shri Kamlendra Sihag and
Shri Kartar Singh Faujdar, Counsel for appellants
Shri B.N. Sandu, P.P., for the State

Presence in Criminal Appeal No.874/2004

Shri Prakash Thakuria for
Shri Dinesh Yadav, Counsel for appellant
Shri B.N. Sandu, P.P., for the State

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By the Court:-

These two appeals, one on behalf of accused-appellants Kalu Meena @ Kalu Ram S/o Shri Badri Prasad Meena and Prakash Meena S/o Shri Sharwan Lal, and another on behalf of accused-appellant Sriman Meena @ Sriman Lal Meena S/o Shri Gulab Meena, are directed against the impugned common judgment dated 31st July,

2004, passed by the Additional Sessions Judge (Fast Track) No.2, Jaipur City, Jaipur, in Sessions Case No.133/2001, whereby the accused-appellants have been convicted and sentenced as under:-

	Sentence of imprisonment to accused-appellants		
Under Section	Kalu Meena @ Kalu Ram	Prakash Meena	Sriman Meena @ Sriman Lal Meena
365, IPC	To undergo 3 years RI and a fine of Rs.1,000/-; in default of payment of fine, to further undergo 1 month's additional SI	To undergo 3 years RI and a fine of Rs.1,000/-; in default of payment of fine, to further undergo 1 month's additional SI	----
376, IPC	To undergo 7 years RI and a fine of Rs.2,000/-; in default of payment of fine, to further undergo 2 months' additional SI	To undergo 7 years RI and a fine of Rs.2,000/-; in default of payment of fine, to further undergo 2 months' additional SI	---
342, IPC	----	----	To undergo 6 months SI and a fine of Rs.5,00/-; in default of payment of fine, to further undergo 1 month's additional SI

Both the sentences were ordered to run concurrently.

The learned counsel for the accused-appellants, Shri Harendra Singh Sinsinwar and Shri Prakash Thakuria, have not pressed the appeals on merits in view of the statement of PW-8 Smt. Munni. Their sole contention raised is to consider the case of the accused-appellants for reduction of their sentence of imprisonment in the facts and circumstances of the

present case. The order of conviction passed by the trial court against all the three appellants has not been challenged by their respective counsel, therefore, it is not necessary to refer and discuss the facts of the case, in detail.

So far as reduction of sentence of imprisonment passed by the trial court is concerned, the learned counsel for the appellants contended that the prosecution filed a charge-sheet against eight accused-persons in the trial court and the trial court framed charges under Sections 498-A, IPC, against accused Prabhu Narain, Chunni Devi and Manphooli Devi, and under Sections 365, 342 and 376, IPC, against accused-persons Kalu, Gutti, Prakash, Shriman, Inderjeet, but, after considering the entire prosecution evidence, the learned trial court itself disbelieved the prosecution case in respect of accused-persons Prabhu Narain, Chunni Devi, Manphooli Devi, Gutti and Inderjeet, and acquitted them from all the charges framed against them, and on the same set of evidence convicted the appellants. The statement of prosecutrix PW-8 Smt. Munni was also referred by the learned counsel for the appellants and therein pointed out contradictions during the course of arguments and on that basis it is contended that looking to all the facts and circumstances of the present case the sentence of imprisonment awarded against the

appellants Kalu Meena and Prakash Meena may be reduced to a period of 5 years RI; so far as accused-appellant Sriman Meena is concerned, it is contended that he has already remained in custody for a period of 4 days during trial of the case and the maximum sentence awarded against him by the trial court is 6 months SI under Section 342, IPC, therefore, either he may be extended the benefit of Probation of Offenders Act or his sentence of imprisonment of 6 months SI awarded by the trial court may be reduced to a period of 4 days imprisonment already undergone by him, with fine as awarded by the trial court.

The learned Public Prosecutor did not seriously oppose the prayer of learned counsel for the appellants in view of the fact that the order of conviction has not been challenged by them and their request is only to reduce the sentence awarded against accused-appellant Kalu Meena and Prakash Meena from 7 years RI to 5 years RI. However, it is contended by the learned Public Prosecutor that the amount of fine of Rs.5,00/- awarded against the accused-appellant Sriman Meena may be enhanced to Rs.1,000/- under Section 342, IPC.

I have considered the submissions of learned counsel for the parties and examined the impugned judgment passed by the learned trial court.

There is no dispute that the prosecution evidence in the present case was partly disbelieved and five accused-persons, as referred above, were acquitted by the trial court itself on the same set of evidence from all the charges framed against them and on that basis convicted and sentenced the present appellants, as mentioned above.

Under sub-section (1) of Section 376 IPC the minimum sentence of seven years is prescribed but it is subject to proviso that the court may, for adequate and special reasons, impose a sentence of imprisonment for a term of less than seven years.

In Prem Chand Vs. State of Haryana, AIR 1989 SC 937, in the peculiar facts and circumstances of that case, the Hon'ble Supreme Court reduced the sentence of imprisonment of ten years awarded under Section 376 (2) IPC, to a period of sentence of imprisonment of five years. The State of Haryana filed review petition before Hon'ble the Supreme Court in the above case and the same was dismissed. The decision of the Hon'ble Supreme Court in that review petition is reported in (1990) 1 SCC 249 (State of Haryana v. Prem Chand & Others).

In Ram Kumar Vs. State of Haryana – (2006) 4 SCC 347, their Lordships of the Hon'ble Apex Court reduced the sentence of seven years under Section 376,

IPC, to a period of three years imprisonment. Para No.3 of the judgment reads as under:-

> "3. The appellant, aggrieved by the order passed by the High Court has filed the above appeal by way of appeal. We have been taken through the statement and evidence recorded by the Court. Our attention was also drawn to the judgment passed by both the Sessions Court as well as the judgment passed by the High Court. The learned counsel for the appellant drew our attention to the statement of the girl Bimla (PW-5) and also drew our attention to the evidence of the doctor. We have carefully analysed the evidence tendered by the prosecution. In our opinion, sufficient evidence was tendered by the prosecution to prove the guilt of the accused. However, at the time of hearing it is brought to our notice that the girl has now got married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts and circumstances of the case, we are of the view that the sentence imposed by the Sessions Court and as affirmed by the High Court under Sections 366 and 376 of the Penal Code is on the highside. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly."

In the case of State of Chhattisgarh Vs. Lekhram (2006) 5 SCC 736 the Hon'ble Apex Court reduced the minimum sentence under Section 376, IPC, of seven years to a sentence of one-and-half-year imprisonment, already undergone by accused therein. Para 16 of the judgment reads as under:-

> "16. The prosecutrix was a mature girl.

> She was married. She spent a few months in her in-laws' place. The respondent was working in her house. They, thus, knew each other for a long time. The prosecution evidently could not prove its case that she was enticed away from the custody of her guardian by the respondent on a false plea that he would marry her. She denied the said suggestion as presumably she was aware that she being married, the question of her marrying the respondent again may not arise. She lived for some time with the respondent in a rented house. Both the courts proceeded on the basis that she was a consenting party. The occurrence took place in the year 1986. The respondent preferred an appeal before the High Court in the year 1987. The same remained pending for about 10 years. The special leave petition was filed by the State 230 days after the prescribed period of limitation for preferring such appeal. The delay in filing the special leave petition, however, was condoned. He is said to have remained in custody for about one-and-a-half years. In the peculiar facts and circumstances of this case and having regard to the facts that both the courts have arrived at the conclusion that she was a consenting party, in our opinion, it may not be proper to send the appellant back to prison."

After considering the statement of prosecutrix PW-8 Smt. Munni as well as other submissions of learned counsel for both the parties, I think it fit and proper that ends of justice will meet in case the sentence of imprisonment awarded by the trial court against accused-appellants Kalu Meena and Prakash Meena is reduced to a period of 5 years RI; and sentence of imprisonment awarded against accused-appellant Sriman Meena is reduced to a period of 4

days imprisonment, already undergone by him under Section 342, IPC, with enhancement of fine from Rs.500/- to Rs.1,000/-.

Consequently, both the appeals are partly allowed. The impugned judgment of conviction passed by the trial court against all the three appellants Kalu Meena, Prakash Meena and Sriman Meena is upheld. The sentence of imprisonment against accused-appellants Kalu Meena and Prakash Meena under Section 365, IPC, is also maintained. But the order of their sentence passed by the trial court under Section 376, IPC, is modified to the extent that instead of 7 years RI, accused-appellants Kalu Meena and Prakash Meena shall undergo 5 years RI and each of them shall pay a fine of Rs.2,000/-; in default of payment of fine, to further undergo additional simple imprisonment of two months. The sentence of 6 months SI under Section 342, IPC, against accused-appellant Shriman Meena is also modified and reduced to 4 days imprisonment, already undergone by him, and the amount of fine of Rs.5,00/- awarded against him is enhanced to Rs.1,000/-; in default of payment of fine, to further undergo 1 month’s additional SI.

A copy of this judgment may be placed in S.B. Criminal Appeal No.874/2004.

(Narendra Kumar Jain) J.

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